

ESTTA Tracking number: **ESTTA703911**

Filing date: **10/22/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Tapatio Foods, LLC		
Entity	Limited Liability Company	Citizenship	California
Address	4685 District Blvd. Vernon, CA 90058 UNITED STATES		

Attorney information	Drew Wilson Christie, Parker & Hale, LLP P.O. Box 29001 Glendale, CA 91209-9001 UNITED STATES pto@cph.com Phone:626-795-9900
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Applicant Information

Application No	86617197	Publication date	09/22/2015
Opposition Filing Date	10/22/2015	Opposition Period Ends	10/22/2015
Applicant	Eggly, David Michael 6353 NE Gratitude Way Poulsbo, WA 98370 UNITED STATES		

Goods/Services Affected by Opposition


Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beer

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	86697244	Application Date	07/17/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TAP INTO THE TASTE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2015/07/09 First Use In Commerce: 2015/07/09 MEATLESS HOT SAUCE

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	TAP INTO THE TASTE		
Goods/Services	Advertising and sale of meatless hot sauce in International Class 030		

Attachments	86697244#TMSN.png(bytes) Notice_of_Opp_Tapatio_Foods.pdf(758330 bytes) Exhibit_A.pdf(871598 bytes) Exhibit_B.pdf(69669 bytes) Exhibit_C.pdf(121821 bytes) Exhibit_D.pdf(629886 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Drew Wilson/
Name	Drew Wilson
Date	10/22/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application **Serial No. 86617197**
For the mark TAP INTO THE TASTE OF
Published in the Trademark *Official Gazette* on September 22, 2015

TAPATIO FOODS, LLC

Opposer,

v.

DAVID MICHAEL EGGLEY, Individual

Applicant.

NOTICE OF OPPOSITION

Opposer Tapatio Foods, LLC, a California Limited Liability Company, with offices at 4685 District Blvd., Vernon, California 90058, believes that it will be damaged by the registration of the mark TAP INTO THE TASTE OF shown in application Serial No. **86617197** in International Class 032 and hereby opposes its registration.

As grounds for the opposition, Opposer alleges that:

1. Applicant David Michael Eggly seeks to register TAP INTO THE TASTE OF as a trademark for beer, in International Class 032, claiming a bona fide intention to use the mark, as evidenced by the publication of said mark in the *Official Gazette* on page TM 3586 of the September 22, 2015 issue.
2. Since at least 1997, and prior to Applicant's priority date herein, Opposer has continuously and extensively used in commerce the trademark TAP INTO THE TASTE in connection with the advertising and sale of meatless hot sauce in International Class 030. Attached hereto as Exhibit A is a true and correct copy

of a photograph of a Tapatio commercial from 1997 that uses the TAP INTO THE TASTE mark.

3. Opposer's use of the mark in advertisements for its meatless hot sauce has been widespread and with a sufficient clarity and repetition to reach a substantial portion of the public that might be expected to purchase Opposer's products. Opposer's use of the mark includes use in television commercials, on roadside billboards, on stadium banners at baseball games, and on posters at trade shows. Attached hereto as Exhibit B, is a true and correct copy of a photograph of Opposer's use of the mark on a billboard overlooking the Interstate 5 freeway in Los Angeles. Attached hereto as Exhibit C, are true and correct copies of Opposer's use of the mark on billboards at the 47,000 seat Angel Stadium of Anaheim, home of the American League baseball team, the Los Angeles Angels of Anaheim. Attached hereto as Exhibit D is a true and correct copy of Opposer's use of the mark on posters at food trade shows.
4. Opposer has significant common law rights in its use of the TAP INTO THE TASTE mark. Opposer has also applied for federal registration of the TAP INTO THE TASTE mark with the USPTO. The application is currently pending, and bears Serial No. 86697244.
5. Class 032 beer is within the natural zone of expansion of Opposer's use of the mark in International Class 030 for meatless hot sauce as the goods are complementary of each other. *Frank Brunckhorst Co. v. G. Heileman Brewing Co., Inc.*, 875 F. Supp. 966, 979 (E.D.N.Y.) (deli meats and beer are often consumed together and are complementary products). Consumers are also likely to encounter the marks together or in near proximity at the grocery store or at concession stands at stadiums.
6. Through the widespread use and advertising of the TAP INTO THE TASTE mark over a long period of time, and by virtue of the quality of goods sold in

connection with the TAP INTO THE TASTE mark, Opposer has acquired valuable goodwill and reputation in the United States in connection with the TAP INTO THE TASTE mark as identifying Opposer as the source of such goods.

7. Opposer is informed and believes that Applicant did not use the TAP INTO THE TASTE OF mark in commerce for beer prior to its filing date of May 1, 2015.
8. Opposer is informed and believes that Applicant has not to date used the TAP INTO THE TASTE OF mark in commerce for beer.

Likelihood of Confusion

9. Applicant's products for which it seeks to register the mark TAP INTO THE TASTE OF are related to the goods distributed and sold by Opposer under the TAP INTO THE TASTE mark.
10. Applicant's mark TAP INTO THE TASTE OF so resembles Opposer's TAP INTO THE TASTE mark previously used in the United States in the advertising and sale of Opposer's goods, from a date prior to Applicant's priority date herein, and not abandoned, as to be likely, when applied to the goods of Applicant, to cause confusion, or cause mistake or to deceive.
11. Opposer would be damaged by the issuance to Applicant of a registration of the TAP INTO THE TASTE OF for the goods set forth in application Serial No. 86617197.

Docket No. 110.2*5/E317

WHEREFORE, Opposer prays that Application Serial No. **86617197** be rejected, as filed, and that the subject mark of that application for the goods identified in International Class 032 be refused registration.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date October 22, 2015

By



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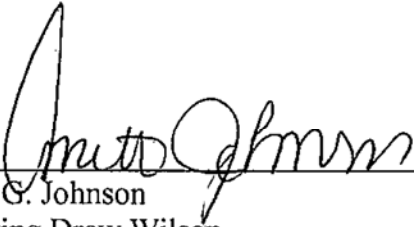
CERTIFICATE OF TRANSMISSION AND SERVICE

I certify that on **October 22, 2015** a true and correct copy of the foregoing document entitled **NOTICE OF OPPOSITION** was electronically transmitted for filing to the:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

It is further certified that on **October 22, 2015**, a true and correct copy of the foregoing document entitled **NOTICE OF OPPOSITION** was served by mailing a copy thereof by first-class mail, postage prepaid, addressed to:

David Michael Eggly
6353 NE Gratitude Way
Poulsbo, Washington 98370-8095

By 
Anita G. Johnson
Assisting Drew Wilson
CHRISTIE, PARKER & HALE, LLP
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Attorneys for Opposer

SDW/aks

AGJ PAS1384413.2-* -10/22/15 9:48 AM

EXHIBIT A



MultiMedia
Broadcast One

MultiMedia/Broadcast One

1-800-841-0087

HOLLYWOOD, CHICAGO, NEW YORK, SAN FRANCISCO, TULSA

B

NEWMARK ASSOCIATES INC.

TAPATIO

B

TAP-102-B

TAP INTO THE TASTE/
WITHOUT 800#

:30

VHS

12/30/97

EXHIBIT B



Tapatio
TAP... INTO THE TASTE!
CELEBRATING 45 YEARS OF SPICING UP YOUR LIFE

Chicago
Houston

The billboard features a vibrant orange and red background with a sunburst pattern. On the left, there is a circular inset showing a smiling woman's face, with the text "SALUDABLE" and "TAPATIO" visible. The main headline "TAP... INTO THE TASTE!" is written in large, bold, white letters. Below it, the text "CELEBRATING 45 YEARS OF SPICING UP YOUR LIFE" is written in smaller white letters. In the bottom right corner, the words "Chicago" and "Houston" are written in small white letters.

EXHIBIT C



TAP into the taste...



RE.COM

B	9	10	R	H	E	LDB
0	1	0	1			
0	0	0	0			

Garrett

Pitched
allowing
to earn his
1st Win

Hot Angels



T

Tajito

est Bank One Person at a Time



to the taste...

HOUSEHOLD SERVICES SELF-MOVING SERVICES THAT DELIVER:

TO TIRE.COM

Budweiser

SAFARI PARK

afe

EXHIBIT D

TAPATÍO



Tap Into The Taste...
of TAPATIO!

